

A meeting of the New Hampshire Water Well Board was held on June 5<sup>th</sup>, 2003 at 9:30 am, in rooms 112 & 113, 6 Hazen Drive, Concord, NH, 03302.

Present: Terrell Swain, Chairman  
Rene Pelletier, Secretary  
Board members: Roger Skillings, Bart Cushing, Andrew Singelakis and David Wunsch.  
Staff: Rick Schofield, and Tim Wilson  
Appeals Clerk: Michael Sclafani  
Absent: Willis "Bud" Rollins Jr.

Chairman Swain brought the meeting to order at 9:35 and opened the meeting by introducing members of the Water Well Board and Staff to the public in attendance.

### **Approval of Minutes**

Mr. Schofield identified several changes to be made to the draft Minutes of the April 3<sup>rd</sup> meeting. Mr. Skillings motioned to accept and correct the changes as read by Mr. Schofield. Mr. Cushing seconded the motion. The Board voted unanimously to approve the Minutes of the April 3<sup>rd</sup>, 2003 meeting.

### **Complaint**

**McKeage/Eddie Nash & Sons, Inc.** - *Mr. Schofield presented an overview of the complaint received on March 26<sup>th</sup>, 2003 from Derwood and Simone McKeage. This complaint is in reference to a complaint that the Board heard February 11<sup>th</sup>, 1999. In the complaint before the Board now the McKeages state that Eddie Nash and Son's has not complied with the Board's ruling, issued on February 19<sup>th</sup>, 1999 to provide them a well. The McKeages also requested that the Board force Mr. Nash to comply by any means at its disposal and also that the Board issue sanctions against Mr. Nash and that his license be revoked. A letter from the McKeage's attorney, Joseph Franzese, also requests that the Board pursue sanctions against Eddie Nash and Son's.*

*Mr. Schofield received a letter from Mr. Nash's attorney, David King (Not Present) requesting that the Board dismiss the matter stating that Mr. Nash complied with all previous orders of the Board with the consent of the McKeage's and also that it appeared that the Water Well Board did not have jurisdiction over the matter.*

Mr. Swain explained that Mr. Nash replaced a well in August of 1999 for the McKeages. Mr. Schofield acknowledged that he was present to oversee the construction of the replacement well but was not present during the initial excavation. Chairman Swain suggested that it was the responsibility of the Board to decide if Eddie Nash & Sons was in compliance with the 1999 ruling.

Mr. Swain called Simone McKeage before the Board along with legal representative Joseph Franzese. Mr. Franzese submitted a written summary of events since the 1999 Board ruling. He outlined this summary verbally concluding that it did not comply with the 1999 ruling because the new well was placed on the abutting property of Mr. Daniel Lynch (present). Mr. Franzese pointed out that Mr. Nash

was the developer of the properties at issue and knew where the boundaries were. Mrs. McKeage added that she was led to believe by Mr. Nash and Mr. Lynch that the well location was on her property based on previous discussions about her boundary lines.

Board member David Wunsch joined the meeting at 9:55.

Mr. Singelakis inquired about the jurisdiction of this issue as it had been raised by Mr. Nash's attorney. Mr. Swain noted that the Board had received advice from counsel that the matter was within the jurisdiction of the Water Well Board.

Mr. Swain called Mr. Eddie Nash before the Board.

Mr. Cushing asked if Mr. Nash was a licensed well installer. Mr. Nash said that he was not but his son Scott Nash had the license. Mr. Cushing asked if a survey map of the property was consulted. Mr. Nash said that he had a map but had given it to the Dowser he employed for finding a water vein. Mr. Nash said that he put the well where the Dowser had suggested. Mr. Singelakis asked other members of the Board who is responsible for knowing where a well should be located. At different times during discussion on this matter Mr. Swain, Mr. Skillings and Mr. Cushing all stated that the driller and/or the developer have the responsibility for knowing the proper location. Some members added that the owner would be involved in the decision. Mr. Cushing asked Mr. Nash if there was any easement filed for the well constructed on the Lynch property. Mr. Nash responded by saying he didn't know. Mr. Franzese stated to Mr. Cushing that there was no easement filed for the well. Mr. Skillings pointed out that no setback information was reported on the well completion report submitted for the well.

Mr. Lynch submitted a photograph to the Board indicating the location for the well he and Mrs. McKeage had agreed upon the day before well construction began.

It was noted that water from the most recently constructed well was tested by Mr. Nash and was found to be potable. The McKeages used this water source until a dispute ensued between the McKeages and Mr. Lynch. This dispute resulted in civil suits being brought by both parties against each other in Coos County District and Superior courts. Following a Superior court decision in his favor, Mr. Lynch installed a shutoff valve on the supply line to the McKeage home and shut off their water supply on June 2<sup>nd</sup>, 2003.

Mr. Skilling motioned that the Water Well Board require that Eddie Nash & Son's install a properly constructed well on the McKeage's property. Mr. Cushing seconded the motion. During further discussion Mr. Skillings clarified the intent of the motion. The well would be constructed and hooked up in accordance with the well regulations of the Board and that it was to be constructed within two weeks. With no further discussion the Board voted unanimously in favor of the motion. Mr. Swain instructed staff to direct a letter to the license holder, Mr. Scott Nash, stating that he must replace a well on the McKeages property within two weeks.

**Reporting**

*At the April 3<sup>rd</sup>, 2003 Water Well Board meeting the Board identified several contractors who were deficient in submitting well completion reports as required by law. The Board voted unanimously in favor to issue a letter requesting them to be in attendance at June 5<sup>th</sup>, 2003 meeting.*

Mr. Swain called Philip Aylward d/b/a Valley Artesian Well Co., Inc to the table. The Board discussed the issue of non-compliance with Mr. Aylward specific to his business practices. Mr. Swain stressed the importance of the data that is collected from the reports to the public present at the meeting. Mr. Wunsch and Mr. Schofield elaborated on this point. Mr. Skillings made a motion to place Mr. Aylward on probation for a period of two years for failure to submit well completion reports. Mr. Cushing seconded the motion. During discussion Mr. Cushing moved to amend Mr. Skillings's motion to add that *all deficient well completion reports done in New Hampshire from 1984 be delivered to the Water Well Board within 30 days.* Mr. Skillings seconded the amended motion. The Board voted unanimously in favor of the motion. Mr. Aylward submitted 28 reports to the Board for wells drilled in 2002 and 2003. Mr. Schofield announced that the Board would supply a list of reports that have been previously submitted so duplicate records would not be provided.

Mr. Swain called K. Sheldon Beebe d/b/a K Beebe Inc. to the table. The Board had discussion with Mr. Beebe regarding his deficiency in submitting well completion reports. Mr. Skillings motioned to place Mr. Beebe on probation for two years and that he must file all past due well completion reports within 30 days and file any new well completion reports on time. Mr. Pelletier seconded the motion. With no further discussion the Board voted unanimously in favor of the motion. Mr. Beebe submitted to staff an additional 24 well completion reports for wells drilled from 1998 through 2003.

Mr. Swain called Luke Fowler d/b/a Fowler Well Drilling to the table. The Board had discussion with Mr. Fowler regarding his business activities. Mr. Fowler informed the Board that for the last two years he has not drilled any wells in New Hampshire. He stated that his drilling equipment has been out of service during this time and has only just gotten his equipment back in 2003. The Board accepted his response and Mr. Fowler was dismissed.

Mr. Swain called Gordon W. Furbish d/b/a Gordon W. Furbish Well Drilling to the table. Mrs. Harriet Furbish represented Mr. Furbish who was in the hospital. Mrs. Furbish was present earlier in the meeting but had to leave for the hospital. She supplied staff with 21 well reports prior to leaving. Mr. Schofield reported that Furbish Well Drilling only submitted one well report in the last several years. Mr. Schofield added that Mr. Furbish had only obtained his drilling license in 2000 and that during this time he has had no complaints. Mr. Cushing motioned for Mr. Furbish to file within 30 days to the Water Well Board any and all reports for wells not previously reported and be on probation for a period of two years after receipt of the documents. Mr. Pelletier seconded the motion. With no further discussion the Board voted unanimously in favor of the motion.

Mr. Swain called Charles Roth d/b/a Roth Artesian Well Company to the table. The Board had discussion with Mr. Roth regarding his deficiency in submitting well completion reports. Mr.

Roth explained that he had no valid reason for not completing reports. Mr. Pelletier motioned that Mr. Roth be required to file any outstanding well reports within 30 days and from that point forward be on a two year probation. Mr. Cushing seconded the motion. With no further discussion the Board voted by majority in favor of the motion. Mr. Skillings was opposed. Mr. Roth submitted to staff an additional 62 well completion reports for wells drilled from 2002 through 2003.

Mr. Swain called Scott Nash d/b/a Eddie Nash & Sons Inc. to the table. Mr. Nash was not present. Mr. Schofield informed the Board that he had spoken by phone with Scott Nash who indicated that he would not be at this meeting. Mr. Schofield suggested that he send a letter to the Board stating that he would not be present and the reasons why. No letter was received from Scott Nash. Mr. Schofield reported that Scott Nash has not submitted any well completion reports from 2000 to present. Additionally that only two reports were submitted in 1999. Mr. Skillings suggested that a letter should be issued to Mr. Nash requesting a response in writing as to why no wells have been constructed during this time. This response should be received within 30 days or an administrative hearing will be scheduled to consider license suspension or revocation.

### **Licensing**

**Steven Schwed-Reinstatement of License** - Mr. Schofield presented the Board with a chronological overview of the activities of Steven Schwed with respect to well drilling and pump installations. Mr. Schwed has requested that his license be reinstated. During discussion Mr. Schofield identified several items that Mr. Schwed needs to do to begin the re-instatement process. These include filing a petition for exemption for all wells drilled from 2000 to present and that the Board must grant the exemption, paying a previously issued administrative fine of \$300 for non-reporting, and filing an application. Mr. Schofield requested direction from the Board regarding the processing of Mr. Schwed's petition for exemption in a timely manner. Mr. Cushing motioned that Chairman Swain be empowered to review the petition and application and conduct a telephone poll, or by other appropriate means, poll of the Board members and act on the Schwed matter. Mr. Skillings seconded the motion. There was no further discussion. The Board voted unanimously in favor of the motion.

Mr. Pelletier left the meeting at the lunch break. 12:22 PM.

**Application of Jeff Bemis (Docket No. LH 03-01)** - Mr. Swain reconvened the administrative hearing of April 3<sup>rd</sup>, 2003. Mr. Swain asked the Board members to identify themselves for the record. Mr. Skillings recused himself from the hearing. Mr. Swain outlined the purpose of the meeting, *which was to determine whether the application and experience of Jeff Bemis d/b/a Quality Pump and Filter meet the requirements for a pump installer license as set forth in RSA 482-B:5 and We 302.4. At the meeting of April 3<sup>rd</sup>, 2003 the record was held open for a period of 60 days so that additional supporting evidence could come forth from Jeff Bemis providing proof of his work experience as indicated on his license application. The additional evidence was to be directed to Michael Sclafani.*

Mr. Sclafani acknowledged that he has not received any filings in this matter. Mr. Sclafani added that the 60-day window that the record was left open expired at the close of business on June 2<sup>nd</sup>, 2003.

Mr. Cushing stated that from previous testimony and documents from the applicant that Mr. Bemis, by his own admission only had 5 months experience, which was far short from the required 36 months of experience.

Mr. Pelletier rejoined the meeting at 12:55PM.

During further discussion it was acknowledged that the license had been denied by Chairman Skillings for lack of sufficient experience. Mr. Bemis had subsequently requested a hearing. The hearing was convened to accept evidence to show whether the applicant possessed the required amount of experience. The record was left open for a period of 60-days to allow the applicant the opportunity to submit additional supporting material. The record was closed. The hearing had been reconvened to decide whether or not Mr. Bemis qualified for a pump installer license.

Chairman Swain called for a vote. A vote of "NO" would support and uphold the decision of former Chairman Skillings to deny the license. A vote of "YES" would overturn the decision of the former Chairman to deny the license.

Mr. Wunsch voted No.

Mr. Cushing voted No.

Mr. Singelakis voted No.

Mr. Pelletier voted No.

Mr. Swain voted No.

The license was denied by a unanimous vote.

Mr. Swain closed the discussion at 1:05PM

Mr. Skillings returned to the table.

### **Continuing Education**

**Michael Capsalis-Request for Exemption** - Mr. Capsalis was not present at the meeting. Mr. Schofield explained that the Board exempted Mr. Capsalis in 2002 from obtaining continuing education units. Mr. Capsalis had conducted seminars that contained subject matter directly related to pump installations. Mr. Swain noted that this year's seminars were focused on tanks and well pit upgrades. Mr. Cushing motioned to deny the request for exemption of Michael Capsalis and the Board will grant him a 60-day extension to obtain 2 hours of continuing education for 2003 to renew his license and that his license will be in full force during the 60-day extension. Mr. Skillings seconded the motion. Mr. Pelletier suggested that in the letter issued, he would be expected to resume taking continuing education units in 2004. There was no further discussion. The Board voted unanimously in favor of the motion.

**Old Business**

**Exams** - Mr. Schofield reported that at the last meeting the Board created an exam committee to look at a question contained in the general exam that appeared to have no correct answer. The committee met on April 16<sup>th</sup>, 2003. Present were Bud Rollins, Roger Skillings, Chip Mackey and Rick Schofield. The issue was resolved by making changes to several questions within the exam. It was identified however that many questions on the exam related to well drilling and those questions may not be relevant to pump installers taking the exam. It was decided that the Board would meet in Executive Session at the end of the next Water Well Board meeting to discuss the questions on the exam.

**Program Advisory Committee** - Mr. Schofield reported that at the last meeting the Board created a program advisory committee to look at the need for additional staffing. Committee members were Tony Guinta, Terry Swain, Bart Cushing, Rogers Skillings and Rick Schofield. The committee met on May 19<sup>th</sup>, 2003. The committee looked at the program in its entirety. The focus was on increasing program efficiency by eliminating unnecessary workload, maximizing available staff resources and reallocation of tasks.

Action items were:

1) Requests for well data. Data mining is time consuming and more efficient ways need to be explored to handle requests for data. Options discussed were implementing request forms, getting the database included in the DES One Stop Program, and removing ext 1974 (Schofield) from responding to well data requests.

2) Enforcement. It was suggested that no staff time should be dedicated to negotiation of settlement agreements. The Board felt that Gretchen Rule should be consulted to see if Water Well Board staff could make procedural changes in settlement agreements and still comply with current DES legal policies.

3) Program Tracking. Rick Schofield will be working with Tony Giunta to establish new task codes for time allocation. This will help to identify areas where tasks may be reallocated.

4) Assign tasks to Kathy Drake for special projects. Re. Private Well Questionnaire. Kathy is already assuming some new duties in support of the water well Board.

Mr. Schofield announced that the next program advisory committee meeting will be scheduled for early August.

Board members discussed other issues that Mr. Schofield presented in his handout. Of note was the lack of a dedicated budget for the Water Well Board. Mr. Pelletier explained that the Board oversees licensed well drillers and the pertinent regulations. The state collects the license fees and they go to the general fund. The Board has no dedicated account. He went on to say that state fees would not go to a Board. State fees will go to an account within an agency that the Board may have input on. Sponsored legislation is what is required to make this happen. The regulated community paying the fees sitting before the House and Senate would be far more likely to find a sponsor for legislation that would fund the service that the Board supplies.

Mr. Wunsch leaves at 2:00PM

**New Business**

**Seminars** - Mr. Schofield briefed the Board on the 2003 seminars provided for continuing education. The seminars brought 145 attendees. A number of questions were generated at the seminars and Mr. Schofield requested that the Board supply the answers to be published in the annual newsletter. The membership addressed each question with Mr. Schofield.

Mr. Swain asked if there was any other business to be discussed. None was heard.  
Mr. Skillings motioned that the meeting be adjourned. Mr. Cushing seconded the motion.

The Board voted unanimously to adjourn the meeting at 2:50PM.

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Rene Pelletier  
Water Well Board Secretary